

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 5, 2006

To: The Commission
(Meeting of April 13, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2062 (Richman) - Electricity: core, noncore, and
core-elect market structure.**
As Introduced February 6, 2006

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support with technical
amendments**

SUMMARY OF BILL:

This bill would eliminate (as of January 1, 2008) the current suspension of direct access. It would allow direct access to resume on that date under a core/noncore market structure, where noncore is defined as any customer over 500kW in load, or aggregated to larger than 500kW in load. The bill would allow direct access for core customers, presumably of any size, that elects "to receive commodity service through direct transactions from eligible renewable resources". The bill requires the Commission to adopt rules by February 1, 2007, for how noncore customers could elect to procure the electricity they consumer from an electric service provider, if they so elected, starting June 30, 2007. The bill would require the Commission to establish rules for how core customers could elect to receive direct access from renewable energy resources by January 1, 2008. The legislation addresses some details of how to implement these changes to the current market structure, including resource adequacy requirements, switching rules between bundled service and direct access, stranded cost recovery, and utility procurement practices.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

Some Commissioner members have previously supported re-opening the direct access market under some form of a core/noncore market structure.¹ The Commission adopted a support in concept position on Assemblymember Richman's core/noncore bill from last year, AB 1704. However, the Commission has not taken a position on the details of such a proposal. This bill would reopen direct access, and as such it is probably generally supported by the Commission; however, the current bill lacks sufficient detail to establish how the core/noncore structure would operate, especially with respect to stranded costs (current and future) and cost shifting between core and noncore. Moreover, there are a few areas where the legislation is inconsistent with current market structure and Commission policy. Those areas are discussed in the suggested amendments section below.

SUMMARY OF SUGGESTED AMENDMENTS (if any):

- (1) The legislation contains overly ambitious timelines for Commission implementation of rules. Recommendation: Amend to allow more time for the Commission to review and establish the rules related to the reopening of direct access. The Commission should have at least 18 months from the time the legislation is enacted to issue rules related to how to start a core/noncore market structure. The Commission should have additional time, after the 18 months to develop program rules for aggregated customer loads, and customers switching to renewable energy products of direct access providers.
- (2) The legislation is inconsistent with existing resource adequacy policy. Recommendation: Amend to reflect current Commission resource adequacy policy where each load-serving entity is responsible for demonstration of its own resource adequacy; currently the bill states that electrical corporations provide resource adequacy services for "all customers" along with transmission and distribution services. (The new section 330.1 (b) "affirms" the electrical corporation's obligation to provide resource adequacy for all customers; no such obligation currently exists.)
- (3) Section 366 (d) establishes the price at which an electrical corporation can charge noncore customers for default service. As currently written, the legislation states that the "default commodity service shall be provided at the higher of the electrical corporation's cost of spot electricity purchases, or the tariff rate for core-elect customers purchasing commodity service". Under current market rules, electrical corporations are forbidden from buying more than 5% of their load on the spot market. It is unclear whether the electrical corporations are even allowed to enter into spot market transactions as described in the legislation. Recommendation: Amend to reflect the fact that electrical

¹ See for example, the transmittal letter from President Peevey and Commissioner Kennedy to Assembly Speaker Nunez regarding AB2006 (April 16, 2004).

corporations are forbidden from entering into spot market transactions over a specific threshold; this market condition may impede the realization of the intent of the legislative language.

- (4) The legislation is unclear as to whether it intends existing direct access customers to pay for stranded costs, especially new long-term contracts incurred by the IOUs. Recommendation: With respect to new (or future commitments), amend to reflect the legislative intent. Clarify that although each LSE is responsible for resource adequacy, the IOUs may be the only ones that sign long-term contracts (until a more durable capacity market approach is instituted) so therefore those long-term commitments will be spread to all customers. Clarify the intent of the somewhat contradictory language of Section 366(h) and Section 366(j). In Section 366(h) the legislation states that noncore customers have to pay for some stranded costs, as determined by the Commission. However, Section 366(j) states that the commission “shall ensure” that customers have no obligation to pay for any future costs. These appear to be contradictory.
- (5) The legislation limits the types of procurement plan commitments that could be made on behalf of core-elect customers. Procurement plans could only cover 3 years or the duration of the core-elect customer’s commitment to being served by the IOU. Recommendation: With respect to core-elect customers, the Commission should determine the appropriate length of time for which the IOU will do procurement planning.
- (6) Interaction of “green choice” (or direct access for ESPs supplying renewable energy products) and the RPS program is unclear. Although not specifically addressed in AB 2062, the legislation appears to assume the creation of a fully functioning tradeable renewable energy credit (“RECs”) program by 2007. This should be clarified.

DIVISION ANALYSIS (Energy Division):

This bill would help achieve the Commission’s interest in pursuing the reopening of direct access. It leaves many implementation details to the Commission, and/or future legislation. This bill supports the concept that noncore customers would be responsible for paying for obligations incurred by IOUs to ensure availability of planning reserves.

- Existing state law bans reopening of direct access until after the expiration of the Department of Water Resources (DWR) contracts (e.g. 2012), but this law would reopen direct access on January 1, 2008.
- This bill would have the CPUC establish a core/noncore market structure with the following parts:
 - **Core** defined as “small retail end-use customers” with a peak demand below 500 kW.

- **Noncore** defined as “larger retail end users of electricity” that have a peak demand of 500 kW and above. Allows noncore customers to elect “on prescribed terms, to receive electric commodity service from the electrical corporation or from an electric service provider, without shifting costs to other customers classes.” Allows Commission authority to lower noncore threshold to customers that have a peak demand of 200kW in size and/or establish rules to **allow customer aggregation** on a voluntary basis in order to meet the noncore threshold.
- **Core-elect** means a noncore customer that makes an election to be served by the IOU. Core-elect customers have to commit to staying with the IOU for a period of 3 years.
- This bill would require that the Commission quickly adopt market rules, including the terms and conditions under which:
 1. noncore customers make take default service from the electrical corporation (and thereby become “core-elect” customers)
 2. core customers can become noncore customers, either through lowering of the noncore customer size threshold, aggregation of customer load, and/or election of a direct access renewable resource provider.
- This bill would require that the Commission establish new tariffs for core and core-elect customers. (Section 366(e)4)
 - a. For core and core-elect customers, the tariffs will need to be reviewed to ensure that there is no cost-shifting between customer classes.
 - b. For noncore customers, the tariffs will need to ensure that noncore customers pay all “applicable transmission, distribution, public goods, and cost recovery surcharge costs otherwise paid by noncore customers for the following purposes:”
 - i. To transmit electricity generated at one location for consumption by the same corporation at a separate location;
 - ii. To procure electricity from any new or expanded generation facilities; or
 - iii. To procure electricity from a cogeneration facility that sold power to an electrical corporation on or after June 1, 2003.
- This bill states that any future noncore customers would be required to pay for some costs incurred by the electrical corporation, as determined by the Commission. This provision appears to expressly sanction the Commission to authorize cost-recovery of long-term procurement contracts, so long as those long-term transactions were approved under the Commission approved procurement plan process. The legislation exempts existing direct access (pre-September 20, 2001) customers; they are not subject to additional cost allocation obligations unless they become core-elect customers (i.e. return to utility service).
- The legislation authorizes the Commission to establish a nonbypassable rate charge to assure cost recovery for procurement costs related to attaining resource

adequacy. The nonbypassable rate charge would cover the costs incurred by electrical corporations to “ensure the availability of planning reserves sufficient to serve all customers of the electrical corporation, including noncore and community choice aggregators.”

- This bill states that customers that change from core-elect to noncore would not be obligated to pay for any costs incurred on their behalf prior to their departure (which means that the IOUs could only undertake procurement hedging transactions for the exact time period of the core-elect customer commitment). This part of the bill may also contradict the preceding two bullets.
- This bill would require that the Commission modify the existing IOU procurement plans so that no commitments are made for more than 3 years. Under this law, core or core-elect customers would only be required to make a 3 year commitment to either their provider or the IOU. The Commission will therefore need to review revised IOU procurement plans that account for increased load uncertainty. IOU procurement plans would need to be modified so that the IOU did not engage in any forward contracting (or hedging) beyond the 3 years of customer certainty.
- This bill seeks to introduce a core/noncore market structure in order to achieve the legislative intent to: develop of cogeneration resources (Section 330.1(d)) and replace aging power plants (Section 330.1(e)), however the language is unclear as to how those goals should be realized from the proposed changes in market structure.
- This bill, with respect to protecting against stranded costs and cost shifting, is overly broad and would be difficult to implement. Section 366(e)3 states that the Commission should adopt market rules with “provisions to ensure prompt recovery of reasonable costs an electrical corporation incurs to serve customers pursuant to this section, and in meeting its obligation to serve, and provisions to ensure there is no cost shifting between customer classes.” In addition, Section 366(a)3 states that the Commission should consider stranded costs when considering lowering the noncore customer size threshold.
- This bill implies that there is a fully functioning tradeable renewable energy credits (“RECs”) tracking system to provide the verification backbone for an energy service provider that provides a “renewable energy product”. This system does not currently exist.
- This bill requires that the Commission ensure that all Energy Service Providers and Community Choice Aggregators meet the renewable portfolio standard and support demand side management programs.

PROGRAM BACKGROUND:

In the current long-term procurement planning (“LTPP”) proceeding, R.06-02-013, the Commission has identified “the need for new policies to support new generation” as an urgent first order issue to be addressed by the proceeding. The Commission has an opportunity, in the LTPP proceeding, to consider allocating costs of new generation to existing direct access customers through some type of nonbypassable system charge. This legislation appears to be consistent with the Commission acting in the LTPP proceeding to approve cost-allocation to all customers. Although the legislation stops short of expressly stating “existing direct access customers” will pay for any new commitments for new generation costs, it does state that “all customers of the electrical corporation, including [future] noncore and community choice aggregation customers” would pay for resource adequacy.

This legislation is consistent with the cost-responsibility provisions of long-term contracts that were stated in D. 04-12-048 in the last LTPP proceeding. The Commission stated that any procurement obligations undertaken by the utility on behalf of existing customers would be the responsibility of those customers for at least 10 years—even if they later became served by direct access or community choice aggregators. The Commission stated it would consider cost responsibility for greater than 10 years on a case by case basis.

Further analysis is needed to assess how this legislation would affect the potential development of a capacity market.

LEGISLATIVE HISTORY:

Last year, Assemblymember Richman introduced AB 1704 which was also a core/non-core bill. The Commission took a support position on that bill. AB 1704 died in the Assembly Appropriations Committee.

FISCAL IMPACT:

The total fiscal impact of this bill is estimated at \$1,108,605. The staffing required to develop and implement a core/noncore framework is estimated to include one Administrative Law Judge II, one Public Utilities Counsel IV, seven Public Utility Regulatory Analysts, one Program & Project Supervisor and one Staff Services Analyst. This estimate may underestimate the workload associated with resurrecting direct access, dealing with Electric Service Provider (ESP) registration and oversight, and all the attendant issues associated with establishing a core/noncore market.

STATUS:

AB 2062 has been referred to the Assembly Utilities & Commerce Committee. A hearing date has not yet been scheduled.

SUPPORT/OPPOSITION:

Unknown at this time.

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BILL LANGUAGE:

BILL NUMBER: AB 2062 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Richman

FEBRUARY 15, 2006

An act to amend Sections 330 and 365 of, to add Section 330.1 to, and to add and repeal Section 366 of, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2062, as introduced, Richman Electricity: core, noncore, and core-elect market structure. (1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to establish rules for all public utilities, subject to control by the Legislature. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public.

The existing Public Utilities Act requires the commission to implement electrical restructuring consistent with certain legislative findings, declarations, and statements of intent. The electrical restructuring provisions require the commission to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers other than community aggregators, as defined, to acquire service from certain electricity suppliers until the Department of Water Resources no longer supplies electricity under that law. The act also requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives.

This bill would declare the Legislature's intent to guide the commission in carrying out the reformation of electrical restructuring in order to implement a core, noncore, and core-elect market structure. The bill would require the commission, on or before February 1, 2007, to adopt rules under which noncore customers, as defined, by a date certain, on or before June 30, 2007, must elect whether to procure the electricity they consume (commodity service) from an electric service provider, elect to receive commodity service from the electrical corporation under a procurement plan for a minimum period of 3 years, or receive default commodity service from

the electrical corporation. Beginning January 1, 2008, an electrical corporation's obligation to provide commodity service through its procurement plan would extend only to core and core-elect customers, as defined, and to provide default commodity service to noncore customers. Default commodity service would be provided at the higher of the electrical corporation's costs of spot electricity purchases, or the tariff rate for core-elect customers purchasing commodity service pursuant to the electrical corporation's procurement plan. The commission would be required to establish rules to ensure that the costs of providing default commodity service to noncore customers are paid solely by those noncore customers, without impacting the rates and charges of core and core-elect customers. The bill would require the commission, on or before July 1, 2007, to establish tariffs for noncore customers that include all applicable transmission, distribution, public goods, and cost recovery surcharge costs otherwise paid by noncore customers for certain purposes. Noncore customers that begin taking commodity service from an electric service provider on or after January 1, 2008, would be required to pay certain costs consistent with those costs that customers of a community choice aggregator are required to pay under existing law. The bill would require the commission to establish rules or tariffs that provide an option for core customers to receive commodity service through direct transactions from renewable resources beginning January 1, 2008, consistent with cost recovery requirements applicable to community aggregators.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Certain provisions of this bill would be part of the act and an order or other action of the commission would be required to implement certain other of the provisions. Because a violation of the bill's provisions or of an order or decision of the commission would be a crime, this bill would impose a state-mandated local program by creating new crimes.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 330 of the Public Utilities Code is amended to read:

330. (a) In order to provide guidance in ~~carrying out this chapter~~ *the initial implementation of electrical restructuring*, the Legislature finds and declares all of the following:

~~— (a) It is the intent of the Legislature that a cumulative rate reduction of at least 20 percent be achieved not later than April 1, 2002, for residential and small commercial customers, from the rates in effect on June 10, 1996. In determining that the April 1, 2002, rate reduction has been met, the commission shall exclude the costs~~

~~of the competitively procured electricity and the costs associated with the rate reduction bonds, as defined in Section 840.~~

~~—(b)~~

(1) The people, businesses, and institutions of California spend nearly twenty-three billion dollars (\$23,000,000,000) annually on electricity, so that reductions in the price of electricity would significantly benefit the economy of the state and its residents.

~~—(c)~~

(2) The Public Utilities Commission has opened rulemaking and investigation proceedings with regard to restructuring California's electric power industry and reforming utility regulation.

~~—(d)~~

(3) The commission has found, after an extensive public review process, that the interests of ratepayers and the state as a whole will be best served by moving from the regulatory framework existing on January 1, 1997, in which retail electricity service is provided principally by electrical corporations subject to an obligation to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to a framework under which competition would be allowed in the supply of electric power and customers would be allowed to have the right to choose their supplier of electric power.

~~—(e)~~

(4) Competition in the electric generation market will encourage innovation, efficiency, and better service from all market participants, and will permit the reduction of costly regulatory oversight.

~~—(f)~~

(5) The delivery of electricity over transmission and distribution systems is currently regulated, and will continue to be regulated to ensure system safety, reliability, environmental protection, and fair access for all market participants.

~~—(g)~~

(6) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.

~~—(h)~~

(7) It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.

~~—(i)~~

(8) Reliable electric service depends on conscientious inspection and maintenance of transmission and distribution systems. To continue and enhance the reliability of the delivery of electricity, the Independent System Operator and the commission, respectively, should set inspection, maintenance, repair, and replacement standards.

~~—(j) It is the intent of the Legislature that California enter into~~

~~a compact with western region states. That compact should require the publicly and investor owned utilities located in those states, that sell energy to California retail customers, to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems.~~

~~—(k)—~~

(9) In order to achieve meaningful wholesale and retail competition in the electric generation market, it is essential to do all of the following:

~~—(1)—~~

(A) Separate monopoly utility transmission functions from competitive generation functions, through development of independent, third-party control of transmission access and pricing.

~~—(2)—~~

(B) Permit all customers to choose from among competing suppliers of electric power.

~~—(3)—~~

(C) Provide customers and suppliers with open, nondiscriminatory, and comparable access to transmission and distribution services.

~~—(1)—~~

(10) The commission has properly concluded that:

~~—(1)—~~

(A) This competition will best be introduced by the creation of an Independent System Operator and an independent Power Exchange.

~~—(2)—~~

(B) Generation of electricity should be open to competition.

~~—(3)—~~

(C) There is a need to ensure that no participant in these new market institutions has the ability to exercise significant market power so that operation of the new market institutions would be distorted.

~~—(4)—~~

(D) These new market institutions should commence simultaneously with the phase in of customer choice, and the public will be best served if these institutions and the nonbypassable transition cost recovery mechanism referred to in subdivisions (s) to (w), inclusive, are in place simultaneously and no later than January 1, 1998.

~~—(m)— It is the intention of the Legislature that California's publicly owned electric utilities and investor owned electric utilities should commit control of their transmission facilities to the Independent System Operator. These utilities should jointly advocate to the Federal Energy Regulatory Commission a pricing methodology for the Independent System Operator that results in an equitable return on capital investment in transmission facilities for all Independent System Operator participants.~~

~~—(n)—~~

(11) Opportunities to acquire electric power in the competitive market must be available to California consumers as soon as practicable, but no later than January 1, 1998, so that all customers can share in the benefits of competition.

—(o)—

(12) Under the existing regulatory framework, California's electrical corporations were granted franchise rights to provide electricity to consumers in their service territories.

—(p)—

(13) Consistent with federal and state policies, California electrical corporations invested in power plants and entered into contractual obligations in order to provide reliable electrical service on a nondiscriminatory basis to all consumers within their service territories who requested service.

—(q)—

(14) The cost of these investments and contractual obligations are currently being recovered in electricity rates charged by electrical corporations to their consumers.

—(r)—

(15) Transmission and distribution of electric power remain essential services imbued with the public interest that are provided over facilities owned and maintained by the state's electrical corporations.

—(s)—

(16) It is proper to allow electrical corporations an opportunity to continue to recover, over a reasonable transition period, those costs and categories of costs for generation-related assets and obligations, including costs associated with any subsequent renegotiation or buyout of existing generation-related contracts, that the commission, prior to December 20, 1995, had authorized for collection in rates and that may not be recoverable in market prices in a competitive generation market, and appropriate additions incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the costs are necessary to maintain those facilities through December 31, 2001. In determining the costs to be recovered, it is appropriate to net the negative value of above market assets against the positive value of below market assets.

—(t)—

(17) The transition to a competitive generation market should be orderly, protect electric system reliability, provide the investors in these electrical corporations with a fair opportunity to fully recover the costs associated with commission approved generation-related assets and obligations, and be completed as expeditiously as possible.

—(u)—

(18) The transition to expanded customer choice, competitive markets, and performance based ratemaking as described in Decision 95-12-063, as modified by Decision 96-01-009, of the Public Utilities Commission, can produce hardships for employees who have dedicated their working lives to utility employment. It is preferable that any necessary reductions in the utility workforce directly caused by electrical restructuring, be accomplished through offers of voluntary severance, retraining, early retirement, outplacement, and related benefits. Whether workforce reductions are voluntary or involuntary, reasonable costs associated

with these sorts of benefits should be included in the competition transition charge.

~~—(v)~~

(19) Charges associated with the transition should be collected over a specific period of time on a nonbypassable basis and in a manner that does not result in an increase in rates to customers of electrical corporations. In order to insulate the policy of nonbypassability against incursions, if exemptions from the competition transition charge are granted, a firewall shall be created that segregates recovery of the cost of exemptions as follows:

~~—(1)~~

(A) The cost of the competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from those customers.

~~—(2)~~

(B) The cost of the competition transition charge exemptions granted to members of the combined class of customers other than residential and small commercial customers shall be recovered only from those customers. The commission shall retain existing cost allocation authority provided that the firewall and rate freeze principles are not violated.

~~—(w) It is the intent of the Legislature to require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998 continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the competition transition charge by applying concurrently for financing orders from the Public Utilities Commission and for rate reduction bonds from the California Infrastructure and Economic Development Bank.~~

~~—(x)~~

(20) California's public utility electrical corporations provide substantial benefits to all Californians, including employment and support of the state's economy. Restructuring the electric services industry pursuant to the act that added this chapter will continue these benefits, and will also offer meaningful and immediate rate reductions for residential and small commercial customers, and facilitate competition in the supply of electric power.

(b) In order to provide guidance in the initial implementation of electrical restructuring, it is the intent of the Legislature that all of the following occur:

(1) That a cumulative rate reduction of at least 20 percent be achieved not later than April 1, 2002, for residential and small commercial customers, from the rates in effect on June 10, 1996. In determining that the April 1, 2002, rate reduction has been met, the commission shall exclude the costs of the competitively procured electricity and the costs associated with the rate reduction bonds, as defined in Section 840.

(2) That California enter into a compact with other western region states. That compact should require the publicly and investor-owned utilities located in those states, that sell energy to California retail customers, to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission

and distribution systems.

(3) That California's publicly owned electric utilities and investor-owned electric utilities should commit control of their transmission facilities to the Independent System Operator. These utilities should jointly advocate to the Federal Energy Regulatory Commission a pricing methodology for the Independent System Operator that results in an equitable return on capital investment in transmission facilities for all Independent System Operator participants.

(4) That the commission require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998, continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the competition transition charge by applying concurrently for financing orders from the Public Utilities Commission and for rate reduction bonds from the California Infrastructure and Economic Development Bank.

SEC. 2. Section 330.1 is added to the Public Utilities Code, to read:

330.1. In order to provide guidance in carrying out the reformation of electrical restructuring, it is the intent of the Legislature to do all of the following:

(a) To establish a market structure in which electrical corporations have an obligation to provide electric commodity service to core customers, and core-elect customers, from a combined portfolio of generation resources allocated on a nondiscriminatory, cost-of-service basis.

(b) To affirm the electrical corporation's obligation to provide transmission, distribution, and resource adequacy services for all customers.

(c) To allow noncore customers to elect, on prescribed terms, to receive electric commodity service from the electrical corporation or from an electric service provider, without shifting costs to other customer classes.

(d) To require an electrical corporation to serve as default provider of electric commodity service, in a manner that will not increase costs of service to core and core-elect customers, and to noncore customers that voluntarily or involuntarily return to the electrical corporation for service.

(e) To encourage the retention of existing, and development of new, cogeneration resources to serve the state's electricity demand in a clean and efficient manner.

(f) To provide for and expedite the construction of electric generation capacity to meet the needs of a growing state and replace this state's most polluting and inefficient electric generation plants by phasing in a retail market for the most efficient and financially stable customers.

SEC. 3. Section 365 of the Public Utilities Code is amended to read:

365. (a) The actions of the commission ~~pursuant to this chapter~~ in the initial implementation of electrical restructuring shall be consistent with the findings ~~and~~ , declarations , and statements of legislative intent contained in Section 330. ~~In~~

(b) In addition, the commission

shall do all of the following:

~~—(a)—~~

(1) Facilitate the efforts of the state's electrical corporations to develop and obtain authorization from the Federal Energy Regulatory Commission for the creation and operation of an Independent System Operator and an independent Power Exchange, for the determination of which transmission and distribution facilities are subject to the exclusive jurisdiction of the commission, and for approval, to the extent necessary, of the cost recovery mechanism established as provided in Sections 367 to 376, inclusive. The commission shall also participate fully in all proceedings before the Federal Energy Regulatory Commission in connection with the Independent System Operator and the independent Power Exchange, and shall encourage the Federal Energy Regulatory Commission to adopt protocols and procedures that strengthen the reliability of the interconnected transmission grid, encourage all publicly owned utilities in California to become full participants, and maximize enforceability of such protocols and procedures by all market participants.

~~—(b) (1)—~~

(2) (A) Authorize direct transactions between electricity suppliers and end use customers, subject to implementation of the nonbypassable charge referred to in Sections 367 to 376, inclusive. Direct transactions shall commence simultaneously with the start of an Independent System Operator and Power Exchange referred to in ~~subdivision (a)~~

~~paragraph (1)~~. The simultaneous commencement shall occur as soon as practicable, but no later than January 1, 1998. The commission shall develop a phase-in schedule at the conclusion of which all customers shall have the right to engage in direct transactions. Any phase-in of customer eligibility for direct transactions ordered by the commission shall be equitable to all customer classes and accomplished as soon as practicable, consistent with operational and other technological considerations, and shall be completed for all customers by January 1, 2002.

~~—(2)—~~

(B) Customers shall be eligible for direct access irrespective of any direct access phase-in implemented pursuant to this section if at least one-half of that customer's electrical load is supplied by energy from a renewable resource provider certified pursuant to Section 383, provided however that nothing in this section shall provide for direct access for electric consumers served by municipal utilities unless so authorized by the governing board of that municipal utility.

(C) *The actions of the commission in carrying out the reformation of electrical restructuring shall be consistent with the statements of legislative intent contained in Section 330.1.*

SEC. 4. Section 366 of the Public Utilities Code is repealed.

~~— 366. (a) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end use customers. Customers shall be entitled to aggregate their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical corporation or its successor in interest, except aggregation by community choice aggregators, accomplished~~

~~pursuant to Section 366.2.~~

~~—(b) Aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited, to small commercial or residential customers. Aggregation may be accomplished by private market aggregators, special districts, or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers, except aggregation by community choice aggregators, which shall be accomplished pursuant to Section 366.2.~~

SEC. 5. Section 366 is added to the Public Utilities Code, to read:

366. (a) As used in this section, the following terms have the following meanings:

(1) "Commodity service" means electricity used by the customer or a supply of electricity available for use by the customer, and does not include services associated with the transmission and distribution of electricity.

(2) "Core customers" means small retail end-use customers of an electrical corporation that as a result of economies of scale, are unable to efficiently enter into direct transactions, including customers with a maximum peak demand of less than 500 kilowatts.

(3) "Noncore customers" means larger retail end users of electricity that as a result of economies of scale, can efficiently enter into direct transactions, including end users with a maximum peak demand of 500 kilowatts or more, or as reduced by the commission. On or before January 1, 2009, the commission may, by rule, reduce the noncore customer maximum peak demand threshold to accommodate load growth and reduction of procurement obligations under Department of Water Resources electricity purchase contracts being managed by the electrical corporations. When considering a reduction in the noncore threshold, the commission shall not strand generation costs in the electrical corporation's procurement plan portfolio, shift costs between core and noncore customers, or lower the threshold below 200 kilowatts maximum peak demand. On or before January 1, 2009, the commission may additionally establish rules allowing customers to aggregate their electrical loads on a voluntary basis in order to meet the noncore threshold.

(4) "Core-elect customer" means a noncore customer that makes an election to be served pursuant to the electrical corporation's procurement plan.

(b) Beginning January 1, 2008, an electrical corporation's obligation to provide commodity service from the electrical corporation's procurement plan portfolio shall extend only to core and core-elect customers. The electrical corporation's obligation to provide commodity service to noncore customers shall be limited to the provision of default service pursuant to subdivision (d). The electrical corporation's obligation to provide transmission, distribution, and resource adequacy services shall extend to all customers.

(c) Beginning January 1, 2008, an electrical corporation shall have no obligation to procure electricity for noncore customers pursuant to a procurement plan, but shall have an obligation to procure electricity for core-elect customers that elect to receive commodity service for a minimum term of three years pursuant to the electrical corporation's procurement plan.

(d) The electrical corporation shall serve as a default provider of commodity service for all noncore customers. The electrical

corporation shall provide default commodity service to noncore customers that, on or after January 1, 2008, voluntarily or involuntarily return to the electrical corporation for commodity service and have not elected to take commodity service as described in subdivisions (c) and (e). Default commodity service shall be provided at the higher of the electrical corporation's cost of spot electricity purchases, or the tariff rate for core-elect customers purchasing commodity service pursuant to the electrical corporation's procurement plan. The commission shall establish rules to ensure that the costs of providing default commodity service to noncore customers are paid solely by those noncore customers, without impacting the rates and charges of core and core-elect customers.

(e) On or before February 1, 2007, the commission shall adopt rules to implement this section. These rules shall include all of the following:

(1) A date certain, on or before June 30, 2007, by which noncore customers must make an election to be served by the electrical corporation for a minimum of three years as a core-elect customer, or to receive service from an electric service provider. Noncore customers failing to make an affirmative election shall receive default commodity service.

(2) Terms and conditions under which noncore customers may take default service, including the time period after which a customer must select core-elect service or return to nonutility service.

(3) Provisions to ensure prompt recovery of reasonable costs an electrical corporation incurs to serve customers pursuant to this section, and in meeting its obligation to serve, and provisions to ensure there is no cost shifting between customer classes.

(4) A method for determining the rates and charges for core and core-elect customers, and the default commodity service price, including estimated prices to be in effect as of January 1, 2008.

(5) Rules for the aggregation of customer load at multiple meters for purposes of determining the core or noncore status of a customer, including the use of appropriate meters.

(6) Provisions to ensure that no cost shifting occurs between core and core-elect customers.

(7) A six-month notice requirement to begin receiving or to cancel core-elect service upon completion of the three year commitment.

(f) On or before July 1, 2007, the commission shall establish tariffs for a noncore customer that include all applicable transmission, distribution, public goods, and cost recovery surcharge costs otherwise paid by noncore customers for the following purposes:

(1) To transmit over nondedicated electrical corporation facilities, electricity generated by a corporation or person at one location for consumption by the same corporation or person, or an affiliated corporation or person, at a separate location.

(2) To procure electricity from new or expanded generation facilities.

(3) To procure electricity from a cogeneration facility that sold power to the electrical corporation on or after June 1, 2003.

(g) In coordination with the resource planning and procurement process established in Section 454.5, the commission shall annually establish the appropriate mix and level of long-term, medium-term, and short-term commitments to be made by an electrical corporation, consistent with the electrical corporation procurement obligations established in this section, and ensure the flexibility needed to

minimize stranded procurement costs.

(h) Noncore customers that begin taking commodity service from an electric service provider on or after January 1, 2008, shall be required to pay the costs described in subdivisions (d), (e), (f), and (g) of Section 366.1, to the extent those costs continue to be incurred by the electrical corporations, as determined by the commission. Any customer receiving service under a direct transaction prior to September 20, 2001, shall not incur any additional obligations under this requirement unless they become core-elect customers.

(i) In consultation with the State Energy Resources Conservation and Development Commission and the Independent System Operator and consistent with Section 380,

the commission shall establish resource adequacy requirements that ensure the availability of planning reserves sufficient to serve all customers of the electrical corporation, including noncore and community choice aggregation customers. The resource adequacy requirements shall ensure cost recovery by the electrical corporation for acquired reserves through a nonbypassable component of the electrical corporation's transmission and distribution charges.

(j) The commission shall ensure that noncore customers moving from core-elect to noncore commodity service at the end of a three-year term, do not have an obligation for any future costs incurred by the electrical corporation or the Department of Water Resources associated with the electrical corporation's procurement plan, and that costs of the electrical corporation's procurement plan shall be recoverable only from core and core-elect customers served by the electrical corporation pursuant to subdivision (c).

(k) The commission shall ensure that all electric service providers and community choice aggregators meet the renewable portfolio standard established pursuant to Article 16 (commencing with Section 399.11) and support demand-side management programs, either directly or through in-lieu arrangements approved by the commission.

(l) The commission shall establish rules or tariffs that provide an option for core customers to receive commodity service through direct transactions from eligible renewable energy resources, as defined in Section 399.12, beginning January 1, 2008, that fully compensates the electrical corporation and the Department of Water Resources for the customer's proportionate share of costs consistent with subdivisions (d), (e), (f), and (g) of Section 366.1.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.